

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Petition of RCC Minnesota, Inc.)	DA 03-3056
)	
for Agreement With Changes in Definition)	
of Service Areas for Exchanges Served by)	
Community Service Telephone Co., Island)	
Telephone Co., Northland Telephone of)	
Maine, Inc., Oxford County Telephone &)	
Telegraph Co., Oxford West Telephone Co.,)	
Somerset Telephone Co., Standish)	
Telephone Co., and West Penobscot)	
Telephone & Telegraph Co.)	

To: Chief, Wireline Competition Bureau

COMMENTS OF RCC MINNESOTA, INC.

RCC Minnesota, Inc. ("RCC"), by counsel and pursuant to the Commission's *Public Notice* dated April 12, 2004,¹ provides comments in support of its Petition seeking FCC concurrence with the Maine Public Utility Commission's ("MPUC's") decision to redefine the service areas of the above-referenced incumbent local exchange carriers' ("ILECs") as provided under Section 54.207 of the Commission's rules, 47 C.F.R. Section 54.207.

¹ *Parties Are Invited To Update The Record Pertaining To Pending Petitions For Eligible Telecommunications Carrier Designations*, DA-04-999 (April 12, 2004). These comments are filed with the Chief, Wireline Competition Bureau, who has delegated authority pursuant to 47 C.F.R. Section 54.207(e); see also, *Wireline Competition Bureau Initiates Proceeding to Consider RCC Minnesota's Petition to Redefine Rural Telephone Company Service Areas in the State of Maine*, (Public Notice) DA 03-3056 (released October 6, 2003).

I. THE SCOPE OF A SECTION 54.207 PROCEEDING IS LIMITED

This case is solely about whether the FCC should concur with the MPUC's decision to redefine affected rural ILEC service areas so that each wire center is a separate service area. This case is not about defining RCC's ETC service area. That decision has been made by a final and unappealable order.

In its decision, which is now a final and unappealable order, the MPUC determined that it was in the public interest to grant ETC status to RCC throughout its FCC-authorized service area in rural Maine. In so doing, the MPUC exercised statutory authority that lies solely with the state. Determinations as to the contours of a competitive ETC's service area and whether the public interest would be served by the competitive ETC's designation are solely within the province of a state's jurisdiction to designate ETCs under 47 U.S.C. Section 214(e)(2). Thus, unless it has relinquished jurisdiction to the FCC, only a state may determine whether it is in the public interest to designate a competitor such as RCC in all or part of an ILEC's service area. This authority necessarily extends to deciding whether to designate a competitor in an area comprising less than an entire ILEC wire center.

RCC's petition to the FCC follows the framework set up by Congress in Section 214(e) of the 1996 Act and the FCC in Section 54.207 of the rules. The state and the FCC must agree on any redefinition of ILEC service areas made necessary by the designation of a competitive ETC in an area that is different from an ILEC study area. The scope of a redefinition proceeding under Section 54.207 is limited to criteria articulated by the Federal-State Joint Board on Universal Service ("Joint Board"). In RCC's case, the MPUC directed the company to file a petition for redefinition, as permitted under Section 54.207(c)(1) of the Commission's rules.²

² See, RCC Minnesota, Inc., et al, Order, Docket No. 2002-344 (MPUC, May 13, 2003) at p. 11 ("MPUC Order") (A copy of the MPUC Order was included with RCC's Petition at Exhibit B).

The Joint Board's stated concerns about redefining rural ILEC service areas have been in place for a number of years and have been addressed in numerous cases throughout the country, including the RCC proceeding in Maine.³ Under Section 54.207, neither the FCC nor the state has authority to dictate the service area redefinition of a rural ILEC. The parties must reach agreement.

II. THE FCC SHOULD FOLLOW THE MPUC'S WELL CONSIDERED DECISION TO REDEFINE THE AFFECTED RURAL ILEC SERVICE AREAS

Concerns raised by the Joint Board focus on whether the proposed redefinition of rural ILEC service areas would, (1) permit RCC to intentionally or unintentionally cream skim low-cost areas of affected rural ILECs, (2) impose any undue administrative burdens on affected rural ILECs, or (3) properly recognize rural ILECs' status as rural telephone companies. These concerns were thoroughly considered in the MPUC's final order. The hearing examiner in RCC's case developed a substantial record, including discovery and briefing. A hearing before the full Commission was held. As a result, the Commission rendered a complete decision, including an analysis of whether consumers or ILECs would be harmed by RCC's proposed service area redefinition.

In particular, the Commission ruled:

While disaggregation may impose some administrative burden, the benefit of preventing "cream skimming" by any future CLEC ETCs is generally desirable, even if RCC is not granted ETC status...We are not concerned the [sic] RCC is targeting any specific areas or that any of the partial exchanges would result in a windfall due to service to a highly populated area. Indeed, all of the partial exchanges are located in very rural areas of Maine. We further find that these companies...have the option of disaggregating their USF support beyond just wire center boundaries, thereby lessening the opportunity for a windfall for RCC should only customers in less rural areas subscribe to RCC's service...To the

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Federal-State Joint Board on Universal Service (Recommended Decision), 12 FCC Rcd 87 (Jt. Bd., 1996).

extent that these companies wish to further disaggregate support, they should file a petition with the Commission.⁴

The MPUC Order was not appealed.

Under Section 214(e) of the Act, the MPUC is charged in the first instance with determining whether a competitive ETC should be designated and for what service area that designation should apply. The MPUC has performed its duty in a complete and well-considered proceeding, pursuant to which all parties have had full opportunity to air their views. No affected rural ILEC made any credible showing as to how it would, or could, be harmed, and nothing in either *Virginia Cellular* or *Highland Cellular* has persuaded the MPUC to alter its decision to define RCC's service area coterminous with its FCC-licensed service boundary.

The MPUC did not file comments in this proceeding. There is no indication that it has backed away from its decision or withdrawn support for RCC's request for concurrence as expressed clearly in its decision. The FCC should concur with the MPUC's service area redefinition because the MPUC is in the best position to determine what is best for its rural citizenry. The state's closer oversight of telephone companies under its jurisdiction and its historical view of the state's telecommunications needs and infrastructure are substantial reasons why Congress delegated to state commissions in the first instance authority to perform ETC designations.

As set forth above, the MPUC ruled that disaggregation of high-cost support is sufficient to protect rural ILECs from competitors receiving uneconomic support levels, even unintentionally. And it specifically analyzed those areas where RCC was proposing to serve for possible harmful effects. Companies that have not disaggregated support may still do so pursuant to Section 54.315 of the FCC's rules, 47 C.F.R. Section 54.315 and the MPUC has invited them

⁴ MPUC Order, *supra*. at pp. 10, 11.

to do so. Under the Path 2 option set forth in Section 54.315(c), rural ILECs may disaggregate into an unlimited number of sub-wire center cost zones to prevent uneconomic support from flowing to competitors.

The FCC is bound by statute to respect a state's judgement, made pursuant to 47 U.S.C. Section 214(e)(2), with respect to whether it is in the public interest to designate a competitor as an ETC in specific rural ILEC service areas. In addition, the FCC should respect the state's judgement regarding whether an ILEC service area should be redefined pursuant to Section 214(e)(5), especially where the matter has been litigated in a hearing. Deferring to a state's expertise would be consistent with the FCC's recent request that the Virginia Corporation Commission examine the FCC's proposed service area redefinition of Virginia Cellular "based on its unique familiarity with the rural areas in question."⁵

III. CONCLUSION

The MPUC has properly considered and reaffirmed its decision to redefine rural ILEC service areas along wire center boundaries. FCC concurrence is entirely appropriate. RCC respectfully requests the FCC to promptly issue an order concurring with the MPUC's redefinition of the above-captioned ILEC service areas so that rural consumers can start to benefit from high-cost support in those areas at the earliest possible date.

Respectfully submitted,

RCC MINNESOTA, INC.

By: _____/S/_____
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⁵ *Virginia Cellular, supra* at 1582.

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May 28, 2004

CERTIFICATE OF SERVICE

I, Kimberly Verven, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 28th day of May, 2004, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Comments of RCC Minnesota, Inc.* filed today to the following:

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